

1  
2  
3 UNITED STATES DISTRICT COURT

4 EASTERN DISTRICT OF WASHINGTON

5  
6 ALVIN LESLIE WITHERSPOON,

7 Plaintiff,

No. 12-cv-5163-JPH

8 vs.

ORDER ADOPTING REPORT AND  
9 BERNARD WARNER, et al,  
RECOMMENDATION

10 Defendants.

11 **BEFORE THE COURT** for resolution is the Report and Recommendation  
12 entered November 15, 2013, **ECF No. 65**, recommending Defendants' motion for  
13 summary judgment, ECF No. 39, be granted. Plaintiff timely objected and  
14 Defendants responded. ECF No. 66, 67.

15 Plaintiff's first objection states an inmate must show deliberate indifference  
16 to serious medical needs to maintain a viable Eighth Amendment claim. ECF No.  
17 66 at 1. He is correct. As indicated in the report, Plaintiff's serious medical needs  
18 were adequately treated. Although he disagrees with the treatment provided,  
19 including the refusal to provide narcotics, Plaintiff's disagreement with medical  
opinions does not amount to deliberate indifference. *Snow v. McDaniel*, 681 F.3d  
978, 987 (9<sup>th</sup> Cir. 2012), citing *Sanchez v. Vild*, 891 F.2d 240, 242 (9<sup>th</sup> Cir. 1989).  
Plaintiff fails to show that the course of treatment the doctors chose was medically

1 unacceptable under the circumstances and chosen “in conscious disregard of an  
2 excessive risk to plaintiff’s health.” *Snow*, 681 F.3d at 988 (internal citations  
3 omitted). Here, doctors have found further surgery not medically necessary at this  
4 time due to Plaintiff’s relatively young age and two prior surgeries at the same site.  
5 ECF No. 65 at 6-7. Plaintiff’s remaining objections contend the magistrate judge  
6 failed to apply the correct summary judgment standard and there are genuine issues  
of material fact making summary judgment inappropriate. ECF No. 66 at 3. These  
objections are groundless.

7 After review, the Report and Recommendation, ECF No. 65, to grant  
Defendants’ Motion for summary judgment, ECF No. 39, is **ADOPTED in its**  
8 **entirety.**

9 **IT IS FURTHER ORDERED**

- 10 1. Defendants’ Motion for Summary Judgment, ECF No. 39, is GRANTED.
- 2 2. The motion to strike, ECF No. 60, is denied.
- 3 3. The complaint is dismissed with prejudice.

12 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
Order, forward uncertified copies to the parties and Magistrate Judge Hutton, and  
13 **CLOSE** the file.

14 DATED this 11<sup>th</sup> day of December, 2013.

15 s/Robert H. Whaley

16 ROBERT H. WHALEY

17 SENIOR U. S. DISTRICT JUDGE